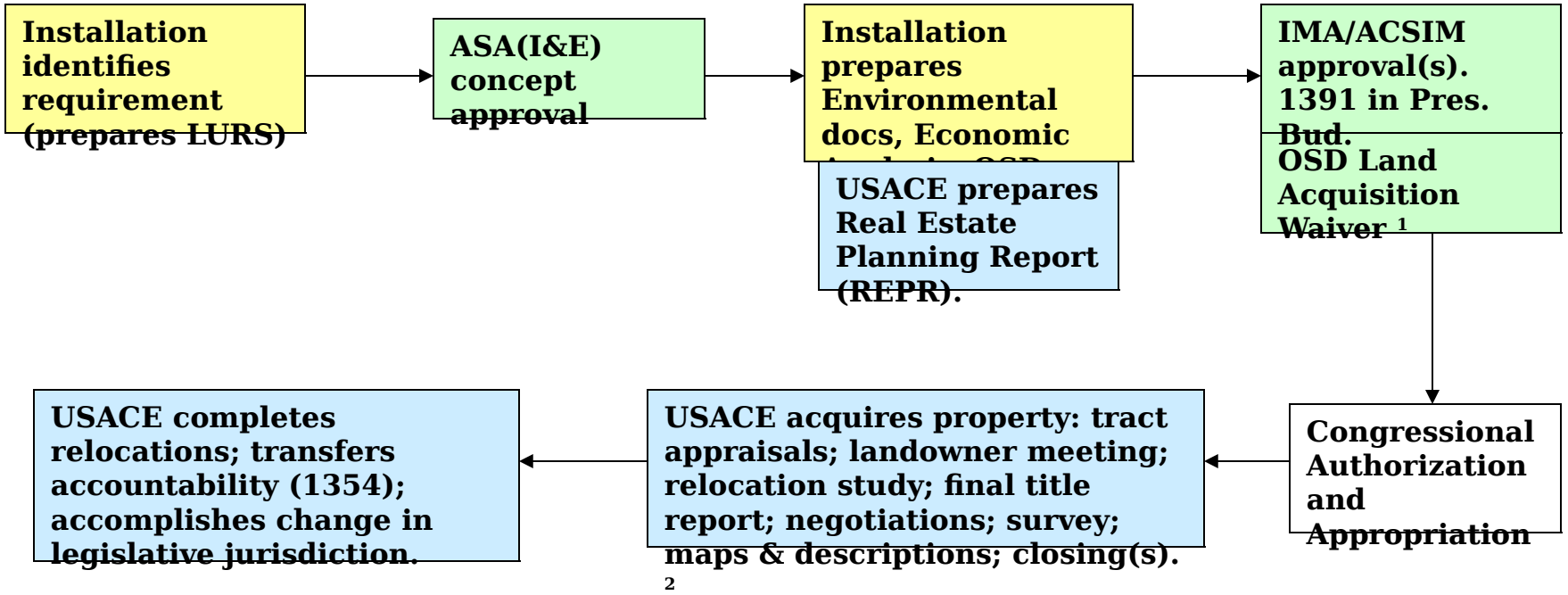
REAL ESTATE ACQUISITION FOR MILCON PROJECTS

19 July 2005

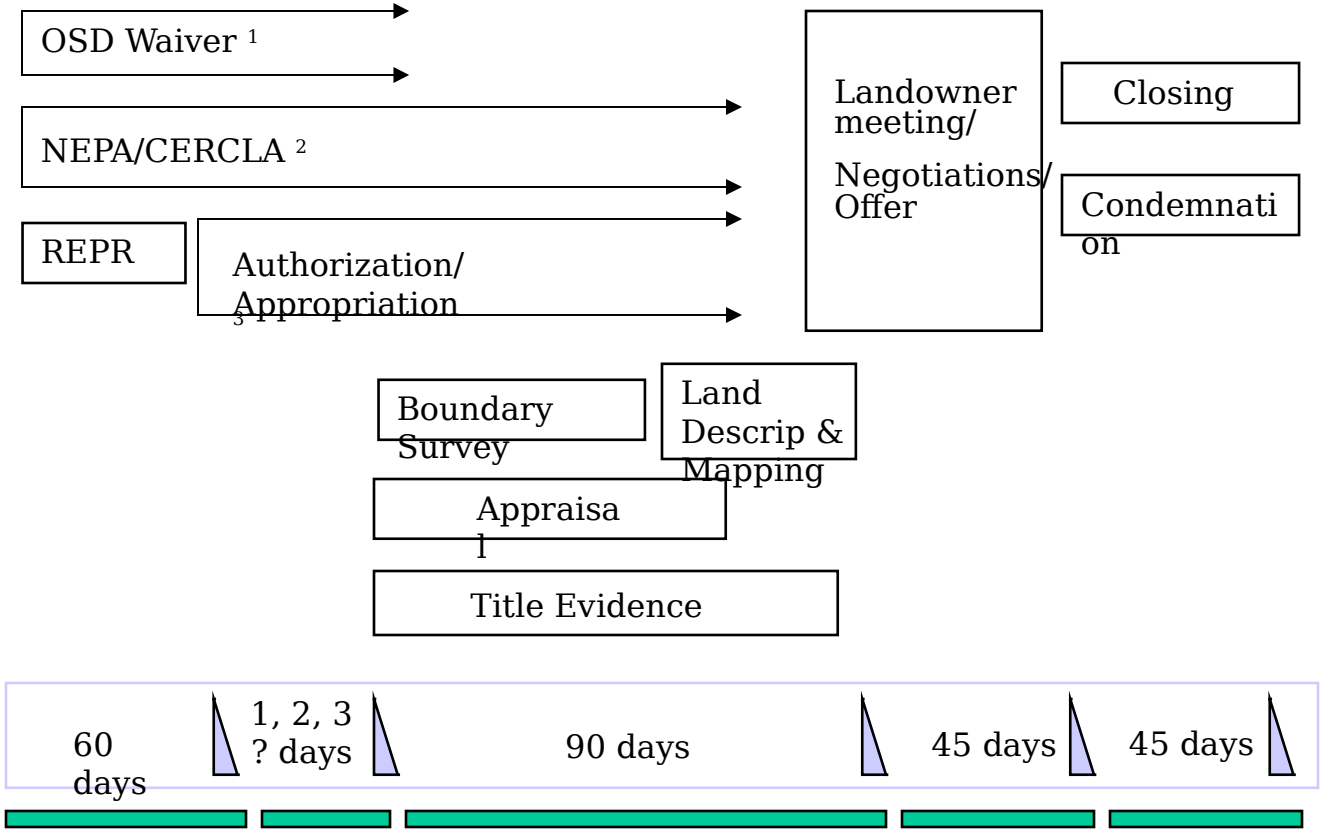
Real Estate Acquisition Process (MILCON)


Installation identifies requirement (prepares LURS)
ASA(I&E) concept approval
Installation prepares Environmental docs, Economic
USACE prepares Real Estate Planning Report (REPR).
IMA/ACSIM approval(s). 1391 in Pres. Bud.
OSD Land Acquisition Waiver 1
Congressional Authorization and Appropriation
USACE acquires property: tract appraisals; landowner meeting; relocation study; final title report; negotiations; survey; maps & descriptions; closing(s). 2
USACE completes relocations; transfers accountability (1354); accomplishes change in legislative jurisdiction.

1. Action to obtain OSD wavier for land acquisition is often not initiated by the installation until after authorization and appropriation.
2. Negotiations are not to begin until environmental documentation is approved and OSD waiver obtained.

REAL PROPERTY ACQUISITION

REAL ESTATE FEE AND EASEMENT ACQUISITION *ESTIMATED* TIMELINE



1. Command responsibility - generally not initiated until after Authorization.
2. Command responsibility – cannot project timeline prior to initial survey of specific site.
3. Up to 5 years for POM, 1391, budget cycle, etc.

REAL PROPERTY ACQUISITION

ARMY POLICY

- Acquire minimum land and interests required for mission.
- ***No public information until concept approval.***
- ***No commitments to property owners except by Corps***
- Permanent and substantial construction on property owned or with permanent interest
- Army National Guard – AR 130-400 and AR 135-9
- Army Reserve – AR 135-9 and AR 140-483

REAL PROPERTY ACQUISITION

ACQUISITION POLICY GUIDES

- DOD Directive Number 4165.6
  Real Property
- DOD Instruction Number 4165.71
  Real Property Acquisition
- AR 405-10
  Acquisition of Real Property and Interests Therein
  - Authority (Appendix A)
  - Policy
  - Responsibility
  - Procedures
- ER 405-1-12
  Real Estate Handbook

REAL PROPERTY ACQUISITION

ELEMENTS OF AN ACQUISITION AUTHORIZATION PROCESS

- Pre-Authorization Work
  Plan/Program (Installation)
  - Land Use Requirements Study (Training Lands)
  - Concept Approval (Secretariat)
  - Analysis Alternative, Study (Training Lands)
  - Economic Analysis (Lease)
  - ***Environmental (EBS/EA/EIS)***
  - Real Estate Planning Report (prepared by USACE, approved by IMA)
    - Gross Appraisal Report
    - Relocation Study (PL 91-646)
  - Complete 1391
  - Clear OSD Moratorium (usually out of sequence)
  - Congress – Title 10 USC 2662
- Authorization - DOD Military Construction Authorization Act (MCA)
- Appropriation - DOD Appropriations Act
- Acquisition Directive

REAL PROPERTY ACQUISITION

Real Estate Planning Report

- Authority
- Project
- Site Selection Team
- Sites Inspected
- Description of Selected Site
- Environmental Impact Analysis
- Relocations (Facilities)
- Attitude of Owners and Neighbors
- Outstanding Interests and Reservations
- Valuation
- Uniform Relocation Assistance (PL91-646)
- Recommended Estate
- Recapture Rights
- Government-Owned Property
- Proposed Construction
- Possession Date
- Administrative Costs
- Schedule of Acquisition
- Recommendation

- Exhibits
- Exhibit A-Directive
- Exhibit B-Regional Map
- Exhibit C-Site Map
- Exhibit D-Vicinity Photographs
- Exhibit E-Project Acquisition Schedule
- Exhibit F-Tract Map

REAL PROPERTY ACQUISITION

PROJECT EXECUTION-ELEMENTS OF AN ACQUISITION

- Landowner Meeting
- Relocation Study
- Title Reports
- Land Surveys
- Maps and Legal Descriptions
- Appraisal Reports
- Negotiations
- Close
- Condemn
- Relocation of Resident, Business, Farm
- Monument Boundary
- Transfer of Accountability (DD 1354)
- Change in Legislative Jurisdiction

REAL PROPERTY ACQUISITION

Acquisition-Landowner Meeting

- Conducted under Corps policy
- Attended by owners, tenants, local officials
- Includes
  - Project Description
  - Acquisition Plan
  - Acquisition Procedures
    - Estates
    - Appraisals
    - Negotiation
    - Closing
    - Condemnation
    - Schedules
    - PL 91-646
    - Q & A

REAL PROPERTY ACQUISITION

Acquisition-Relocation Study

- Initiated in compliance with PL 91-646
  - Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 for Displaced Persons, Business and Farm Operation
- Title I General Provisions-definitions
- Title II Policy
  - Purpose-Fair and Equitable Treatment
  - Moving and Related Expenses
  - Replacement Housing
- Title III Acquisition Policy
  - Negotiate
  - Complete Appraisal Report
  - Offer appraised amount
  - Give written summary
  - Deposit money before possession
  - Give 90 day notice
  - Offer to acquire uneconomic remnant

REAL PROPERTY ACQUISITION

Acquisition-Title Reports

- Acquired per Department of Justice Standards
- Usually Title Insurance Policy
- Identifies:
  - Type of Ownership
  - Owners
  - Interest
  - Other property rights
- Enables Corps to:
  - Value the interest
  - Pay proper party
  - Protect government interest

REAL PROPERTY ACQUISITION

Acquisition-Land Surveys

- Locates parcels on the ground.
- Measurements by wagon wheel, sound waves, light beams.
- Direction by compass, theodolite, GPS.
- Results are in bearings, distances, sections of land.

REAL PROPERTY ACQUISITION

Acquisition-Maps and Legal Descriptions

- Tract Maps
  - Based on surveys.
  - Depicts specific location of property.
  - Shows Tract, estate, owner, etc.

- Legal Description
  - Location of Tract
  - Point of Beginning, progression, ending
  - References recorded documents
  - Critical to acquisition

REAL PROPERTY ACQUISITION

Acquisition-Appraisal Reports

- Required by PL 91-646, Title III
- Completed per Interagency Land Acquisition Conference “Uniform Appraisal Standards for Federal Land Acquisitions” 2000.
- Based on Federal Case Law, Professional Practice
- Fair Market Value
- Highest and Best use
- Market, Cost, Income Approaches
- Valid Conclusion
- Reviewed for Sufficiency

REAL PROPERTY ACQUISITION

Acquisition-Negotiations

- AR 405-10, paragraph 2-9g: “Under no circumstances will commitments be made (either by negotiations or by dissemination of information to property owners) by any authority other than the Chief of Engineers. This is to avoid misunderstandings by property owners and resultant embarrassment to the Department of the Army; …”

- Acquisition Contracts
  - Offer to Sell Real Property (Fee)
  - Offer to Sell Easement
  - Option to Purchase Real Property
  - Terms and Conditions, Reservations, Exceptions

- Negotiator’s Report

REAL PROPERTY ACQUISITION

Acquisition-Closing

- Completion of Voluntary Acquisition
- Done by Approved Attorney
- Assures clear title per DOJ standards
- Prepares documents, obtains check
- Completes closing, assures policy satisfactory
- Prepares Final Title Opinion

REAL PROPERTY ACQUISITION

Acquisition-Condemnation

- Used for title defects, price disagreement, quick possession
- Usually prepare Declaration of Taking (DT)
- Against land, list all owners, deposit funds
- Title passes upon filing
- Must have signed Order of Possession
- Settled by Stipulation or Judgment

REAL PROPERTY ACQUISITION

Acquisition-Relocation of Resident, Business, Farm

- Completed per initial Relocation Study
- Move residents prior to possession – 90 day notice
- Process claims, pay move costs
- Time consuming, expensive
- Best done by experts

ACQUISITION-FINAL ACTIONS

- Monument Acquired Boundary
  For MCA or Minor
- Transfer Accountability
  AR 405-45, DD Form 1354
- Change Legislative Jurisdiction
  AR 405-20

REAL PROPERTY ACQUISITION

ACQUISITION – OTHER MEANS

- Transfer - 10 U.S.C. 2571 - $0
  - Congress Approve > $750,000
- Exchange – 10 U.S.C. 2672 < $750,000
  - Congress Approve > $750,000
- Withdrawal of Public Domain Lands
  FLPMA – 43 U.S.C. 1701
  Special Legislation > 5,000 Acres

REAL PROPERTY ACQUISITION

ACQUISITION – LESSOR INTERESTS

- Lease

  Authority – Annual Appropriation Acts, Other
  Congressional Approval > $750,000

- License

- Permit

- Right of Entry for Survey and Exploration

- Right of Entry for Construction

- Maneuver Agreements